

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DEREK M. BAILEY, PRO SE — PETITIONER
(Your Name)

LORIE DAVIS vs.
DIRECTOR TDCJ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DEREK M. BAILEY, PRO SE

(Your Name)
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BEAUMONT, TEXAS 77705

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) WHETHER THERE IS A TIME LIMITATION FOR A FEDERAL RULES OF CIVIL PROCEDURE 60(b)(6) MOTION REQUESTING RELIEF FROM OPERATION OF THE JUDGMENT IN A FEDERAL HABEAS CORPUS PROCEEDING THAT ATTACKS THE INTEGRITY OF SAID PROCEEDING AND NOT THE MERITS OF SAID PROCEEDING BASED ON THE FEDERAL JUDGES' FAILURE TO RECUSE HIMSELF?;
- 2) WHETHER CERTIFICATE OF APPEALABILITY IS APPROPRIATE IN SUCH CIRCUMSTANCES?;
- 3) WHETHER THE FEDERAL JUDGE IS EQUITABLY ESTOPPED FROM CREATING A TIME LIMITATION?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

FEDERAL RULES OF CIVIL PROCEDURE 60(b)(6): "Any other reason that justifies relief";

28 U.S.C. § 455(a): "Disqualification of Justice, Judge, or Magistrate";

28 U.S.C. § 2253: "Certificate of Appealability"

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A,B,C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

1.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12/12/17.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 12/12/17, and a copy of the order denying rehearing appears at Appendix B,C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article 1, § 1:"All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a Senate and House of Representatives.";

United States Constitution, Article III, § 2:"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States,---.";

United States Constitution, 6th Amendment:"Impartial jurist";

United States Constitution, 14th Amendment:"Due Process Clause";

Federal Rules Of Civil Procedure, Rule 60(b)(6):"Grounds for relief from a final judgment, order, or proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(6) any other reason that justifies relief."

28 U.S.C. § 455(a):"Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.";

28 U.S.C. § 2253(c)(1):"Unless a circuit justice or judge issues a certificate of Appealability, an appeal may not be taken to the court of appeals from-
(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or---"

STATEMENT OF THE CASE

Petitioner filed Federal Rules Of Civil Procedure, Rule 60(b)(6) motion on 10/11/16 with the United States District Court in San Antonio, Texas under cause number SA-96-CV-742 showing defect in the integrity of the original Federal habeas proceeding of extra-judicial source and failure of the Federal judge to sua sponte recuse himself. Notice of Appeal is filed on 1/16/17 from denial of said judge (same) on 1/6/17 claiming time limitation bar for rule 60(b)(6) motion. The United States Court of Appeals for the Fifth Circuit on 2/2/17 then notified petitioner that filing fees were due in cause # SA-96-CV-742 for appeal. Notice of prior granted in forma pauperis in said cause is filed to correct this error on 2/10/17 and notice to disregard is filed by the Court of Appeals on 2/14/17, but states must file 28 U.S.C § 2253 for Certificate of Appealability. Appeal is filed for abuse of discretion standard citing judge's creation of time limitation contrary to this court's statement in no clear ruling and under Rule 60(b)(6) is subject to no absolute time limitation, and showing that said motion is not attacking the merits of the disposition of the Federal habeas corpus. The court of appeals denied appeal citing 28 U.S.C. § 2253 instead of the correct standard on 10/25/17. Panel rehearing motion is filed on 11/8/17 again reiterating no time limitation and is denied on 12/12/17. En Banc rehearing motion is filed on 12/12/17 and notice of this court's decision of HARBINSON V. BELL, 556 U.S. 180 (2009) for the correct standard for appeal and not certificate of appealability on 12/22/17. On 1/4/18 petitioner received notice that "We take no action on the en banc rehearing. The appeal is closed.", based on denying certificate of appealability on 10/25/17 and 11/29/17, dated 12/18/17, six days after placed in the prison mail box.

REASONS FOR GRANTING THE PETITION

The first reason is that this court left open, for the most part, that there is no time limitation for a Federal Rules Of Civil Procedure, Rule 60(b)(6) motion with out a ruling/decision on this, see GONZALEZ V. CROSBY, 125 S.ct. 2641 (2005); LILJEBERG V. HEALTH SERVICES ACQ. CORP., 108 S.ct. 2194 (1988); HARBISON V. BELL, 556 U.S. 180 (2009); and BUCK V. LORIE DAVIS, DIRECTOR TDCJ, 137 S.ct. 759 (2017). This is of great importance and should be settled by this court, especially in the context of petitioner's claims of defect in the integrity of the original Federal habeas proceeding of matters that is extra-judicial dealing with the self-effecting recusal of the judge. It "poison's public confidence" in the judicial process, BUCK, SUPRA. The Federal District court judge (democrat state representative prior), the Texas Attorney General (Dan Morales), and the Chairman of the Texas Democrat Commission (Charles Soechting, nephew of the alleged victim) favoritism invites question of the judge's impartiality. This given Dan Morales conviction for corruption during said proceeding, Charles Soechting's removal resulting from an ethics investigation and the judge's showing favoritism for his Democrat party using race instead of political facts in the recent published (2017) Texas redistricting squable. Soechting's exposure is published in 2006. The Federal judge is a Texas State representative while a Texas Democrat during Soechting's tenure. Impartiality is not the same as for a prosecutor as for a judge, MARSHALL V. JERRICO, 100 S.ct. 1610 (1980).

The second reason is that there is no time limitation for 28 U.S.C. § 455(a) which is the basis of petitioner's motion for relief from operation of the judgment rule 60(b)(6). The judge should have applied EQUITABLE ESTOPPEL to the

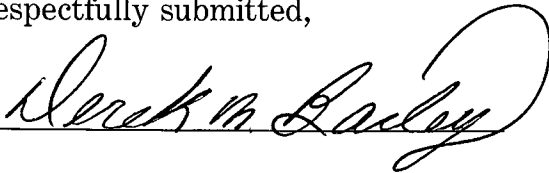
use of time limitation to himself when the legislature set no time limitation for rule 60(b)(6) or §455(a), see CHUNG V. U.S. DEPT. OF JUSTICE, 333 F3d 273 (D.C. Cir. 2003) and U.S. v. BEGGERLY, 118 S.ct. 1862 (1998)(Equitable tolling if consistent with the text of the relevant statute). In this the court of appeals has sanctioned such a departure by the District court judge, and this calls for an exercise of this court's supervisory power, WILLIAMS V. PENNSYLVANIA, 136 S.ct. 1899,1908 (2016).

The third reason is the court of appeals is claiming petitioner must seek Certificate Of Appealability. Because of this court's decision in HARBISON V. BELL, SUPRA, petitioner is denied a fair appeal for abuse of discretion by the judge's use of time limitation as the issue is not of the merits that dispose of original habeas corpus, is of extra-judicial source and is extra ordinary. It has decided an important federal question in a way that conflicts with relevant decisions of this court. U.S. V. GRINNELL CORP., 384 U.S. 563, 583 (1966).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 1/12/18

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